Mohamad Isa bin Zakaria v Timbalan Menteri Dalam Negeri Malaysia & Ors

HIGH COURT (MUAR) — CRIMINAL APPLICATION NO 44–4 OF 2000
JEFFREY TAN J
29 NOVEMBER 2000

Criminal Procedure *— Habeas corpus — Application for — Principles governing — Whether there are technical defects invalidating the order of detention*

The applicant applied for a writ of habeas corpus against the order made under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). It was contended that: (i) looking at exh MIZ-2, the report was submitted to the Minister on 31 December 1999 and the order was made by the Minister on 31 December 1999. In fact, the report was submitted to the Deputy Minister and the order was made by the Deputy Minister; (ii) six copies of Form 1 of the Act were served instead of three as required by r 3(3) of the Schedule to the Dangerous Drugs (Special Preventive Measures) Rules 1987 ('the Rules'); and (iii) the Minister did not acknowledge the service of the report.

Held, dismissing the application:

(1) The applicant's first argument had no factual basis at all. Exh MIZ-2 said that the Deputy Minister directed the detention of the applicant for a period of two years beginning 31 December 1999 and that the Deputy Minister made the order on 31 December 1999. It did not say that the report was submitted to the Minister on 31 December 1999. Neither did it say that the order was made by the Minister on 31 December 1999. (see p 449D–E).

(2) Rule 3(2)(b) of the Rules states the minimum copies to be served and the rule would be observed if the minimum copies are served. There was nothing wrong with the service of six copies of Form 1 the Act. The applicant could not have been prejudiced in any way. There was service, after all, of the minimum number of copies (see p 449G–H).

(3) There was clear evidence as to the actual date on which the designated officer submitted his report to the Minister. The Deputy Minister himself affirmed that he received the reports. Rhetorically speaking, no further formal acknowledgment by the Deputy Minister was necessary (see p 450C).

(4) The detaining authority had shown that the detention was in the exercise of a valid legal power. On the other hand the applicant had not shown that the power had been exercised mala fide or improperly. Therefore, the application was dismissed (see p 450F).

[Bahasa Malaysia summary

Pemohon telah membuat permohonan untuk satu writ habeas corpus terhadap perintah yang telah dibuat di bawah s 6(1) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta tersebut'). Adalah dihujahkan bahawa: (i) dengan melihat eksh MIZ-2, laporan telah dikemukakan kepada Menteri pada 31 Disember 1999 dan perintah telah dibuat oleh Menteri pada 31 Disember 1999. Pada hakikatnya, laporan tersebut telah dikemukakan kepada Timbalan Menteri dan perintah tersebut telah dibuat oleh Timbalan Menteri; (ii) enam salinan Borang 1 Akta tersebut telah disampaikan dan bukan tiga sebagaimana yang diperlukan oleh k 3(3) Jadual kepada Kaedah-Kaedah Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1987 ('Kaedah-Kaedah tersebut'); dan (iii) Menteri tidak membuat akuan penerimaan terhadap penyampaian laporan tersebut.

Diputuskan, menolak permohonan tersebut:

(1) Hujahan pertama pemohon tidak mempunyai dasar asas langsung. Eksh MIZ-2 menyatakan bahawa Timbalan Menteri telah mengarahkan penahanan pemohon bagi tempoh dua tahun bermula dari 31 Disember 1999 dan bahawa Timbalan Menteri telah membuat perintah tersebut pada 31 Disember 1999. Ia tidak menyatakan bahawa laporan tersebut telah dikemukakan kepada Menteri pada 31 Disember 1999. Ia juga tidak menyatakan bahawa perintah tersebut telah dibuat oleh Menteri pada 31 Disember 1999 (lihat ms 449D–E).

(2) Kaedah 3(2)(b) Kaedah-Kaedah tersebut menyatakan salinan minimum yang perlu disampaikan dan kaedah tersebut akan dipatuhi jika salinan minimum tersebut disampaikan. Tiada apa yang salah dengan penyampaian enam salinan Borang 1 Akta tersebut. Pemohon tidak mungkin diprejudiskan dalam apa cara. Sememangnya terdapat penyampaian, apa sekalipun, dalam jumlah salinan yang minimum (lihat ms 449G–H).

(3) Wujud keterangan yang jelas berhubung tarikh sebenar di mana pegawai yang ditugaskan telah mengemukakan laporan beliau kepada Menteri. Timbalan Menteri sendiri telah mengesahkan bahawa beliau telah menerima laporan-laporan tersebut. Secara retorik, tidak diperlukan lagi apa-apa akuan penerimaan rasmi daripada Timbalan Menteri (lihat ms 450C).

(4) Pihak berkuasa penahanan telah menunjukkan bahawa penahanan tersebut telah dijalankan dengan kuasa yang sah. Sebaliknya pemohon tidak menunjukkan bahawa kuasa tersebut telah dijalankan secara mala fide atau tidak betul. Oleh itu, permohonan tersebut telah ditolak (lihat ms 450F).]

Notes

For cases on habeas corpus, see 5 *Mallal's Digest* (4th Ed, 1997 Reissue) paras 1505–1572.

Cases referred to

Puvaneswaran v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1991] 3 MLJ 28 (refd)

Tan Yap Seng v Ketua Polis Negara & 2 Ors [1991] 2 CLJ 1400 (refd)

Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 3(2)(c), 5(4), 6(1)

Dangerous Drugs (Special Preventive Measures) Rules 1987 rr 3(2)(b), 3(3), Form 1

Federal Constitution art 5(3)

James Diminic Culaz (*Hari & Assoc*) for the applicant.

Mohamad Abazafree bin Mohd Abbas (Federal Counsel, Ministry of Home Affairs) for the respondents.

Jeffrey Tan J. : This is an application for a writ of habeas corpus, by the applicant who is presently being detained pursuant to an order made under s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act').

When this application was first argued, on 27 October 2000, Mr James Dominic Culaz for the applicant adumbrated the issues as the following:

(i) the application of the mind of the Deputy Minister when he signed the detention order,

(ii) the service of Form 1 prescribed in the Schedule to the Dangerous Drugs (Special Preventive Measures) Rules 1987 ('the Rules').

Mr Culaz contended that looking at exh 'MIZ-2', the report was submitted to the minister on 31 December 1999, and, the order was made by the minister. In fact, he further contended, the report was submitted to the deputy minister, and, the order was made by the deputy minister. 'If the reports were tendered to the Minister, why was the order signed by the deputy minister? He further asked, 'Did the deputy minister apply his mind?' On the issue of the service of Form 1, Mr Culaz said that six copies were served, and r 3 which only required service of three copies was not as such followed. 'The officer in charge could not do more than r 3(3).' Then augmenting the two issues he had adumbrated, Mr Culaz said that there is evidence that s 3(2) of the Act was not followed, and that the detaining authority must justify the detention. Further submission was adjourned by consent at that juncture, to enable the learned Federal Counsel, En Mohamad Abazafree bin Mohd Abbas who said that issues related to s 3(2) of the Act were not raised in the affidavits of the applicant, to file further affidavits.

A However, Mr Culaz did not touch on any issue relating to s 3(2) of the Act, when oral submission resumed on 29 November 2000. Instead, raising a new issue, he contended that the minister did not acknowledge the service on 15 November 1999 of the report submitted by Superintendent Zabidin. As authority, he submitted *Tan Yap Seng v Ketua Polis Negara & 2 Ors* [1991] 2 CLJ 1400, where it was held that in the absence of evidence as to
B the actual date on which the designated officer submitted his report to the Minister under s 3(2)(c) of the Act, the court is not at liberty to presume that he had done so within the time limited.

En Mohamad Abazafree responded that under s 3(2)(c) of the Act the only requirement is that the designated officer shall forward his report to the
C minister. There is no requirement for the minister's prior clearance for any further detention. En Mohamad Abazafree lastly said, that the 14 days report was submitted to the minister on 15 November 1999 at 9.40am.

Mr Culaz only replied that the issue is whether the report was submitted to the Minister.

D But with respect, the arguments of the applicant were all at sixes and sevens, because the applicant would not read or accept the text or substance of the documents and matters affirmed. 'MIZ-2' was the detention order made under s 6(1) of the Act on 31 December 1999. It says, that the deputy minister directed the detention of the applicant for a period of two years beginning 31 December 1999, and, that the deputy minister made the order
E on 31 December 1999. That is all there is to 'MIZ-2'. 'MIZ-2' does not say that the report was submitted to the minister on 31 December 1999. Neither does it say that the order was made by the minister on 31 December 1999. There is no factual basis at all for to argue 'that looking at exh MIZ-2 that the report was submitted to the minister on 31 December 1999 and
F that the order was made by the minister'. Sadly, it was still so argued, by torturing and corrupting irrefragable facts.

Rule 3(2)(b) requires service of three copies of form 1 on the applicant. Unarguably, there is a duty, on the part of the detaining authority to strictly follow procedure (see *Puvaneswaran v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1991] 3 MLJ 28). But that is not to say that the
G provisions of the relevant statute must be so exactly followed, to the point that service of six copies is not service as required by r 3(2)(b) of the Act. That would be splitting hairs. Rule 3(2)(b) states the minimum copies to be served. And r 3(2)(b) would be observed if the minimum copies are served. There was nothing wrong with the service of six copies of Form 1, even if
H that was the case, on the applicant . The applicant could not have been prejudiced in any way. There was service, after all, of the minimum number of copies. But it would seemed, so far as the applicant was concerned, that reason could not prevail.

Section 3(3) of the Act provides that 'the police officer making an investigation pertaining to a person arrested and detained ... shall cause a
I copy of the complete report of the investigation to be submitted ... to the Minister', and, s 5(4) of the Act provides that 'an inquiry officer shall submit his report in writing to the minister ... 'All in all, the deputy minister

should have received two reports — the report of investigation submitted under s 3(3) of the Act, and, the report of the inquiry officer submitted under s 5(4) of the Act. Mr Culaz contended that the deputy minister had not acknowledged receipt of the report submitted to him. En Mohamad Abazafree contended that the s 3(3) report was submitted to the minister on 15 November 1999 at 9.40am. Indeed, on 13 November 1999 at 10.02am (see encl 16 para 3), Superintendent of Police Abd Malik bin Hj Hashim reported the circumstances of the arrest and detention to the designated officer, and on 15 November 1999 at 9.40 am (see encl 13 para 5) the designated officer (Superintendent of Police Mohd Zabidin bin Haji Mahmud) duly reported the same to the minister. Unlike *Tan Yap Seng v Ketua Polis Negara & 2 Ors* there is clear evidence as to the actual date on which the designated officer submitted his report to the minister. And the deputy minister himself affirmed (see encl II para 5) that he received those ss 3 and 5 reports. Rhetorically speaking, what further formal acknowledgment by the deputy minister of his receipt of the reports is still necessary? There is no doubt that the deputy minister received those reports. It is futile to contend otherwise.

Article 5(3) of the Federal Constitution provides that whenever the liberty of a person is deprived and a complaint is made, the court shall inquire into the complaint and unless satisfied that the detention is lawful shall order him to be produced before the court and release him. The preceding art 5(1) also provides that no person shall be deprived of his life or personal liberty save in accordance with law.

In the instant case, the deputy minister affirmed that he was satisfied, after having studied the reports submitted to him, that the applicant had been or was associated with activity relating to or involving the trafficking in dangerous drugs and that it was necessary in the interest of public order that the applicant be detained for a period of two years. The detaining authority has shown that the detention is in the exercise of a valid legal power. On the other hand, the applicant has not shown that the power had been exercised mala fide or improperly. In the inevitable result, and for the reasons aforesaid, this application is dismissed.

Application dismissed.

Reported by Jafisah Jaafar